

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
MAY 3, 2016**

- CALL TO ORDER**
6:00 pm
- A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Gina Klempel, Mark Hash, Ole Netteberg and Roger Noble. Cal Dyck had an excused absence. Mark Mussman, Rachel Ezell and Donna Valade represented the Flathead County Planning & Zoning Office.
- There were 20 people in the audience.
- APPROVAL OF MINUTES**
6:00 pm
- Klempel motioned and Noble seconded to approve the April 5, 2016 minutes as provided in the meeting packet.
- The motion passed unanimously.
- ELECTION OF OFFICERS**
6:00 pm
- Election of officers was postponed until a full Board is present.
- PUBLIC COMMENT**
6:00 pm
(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A)
- None
- NOTICE OF INTENT FVCC**
6:01 pm
- A request by Flathead Valley Community College to construct a teaching brewery on the existing campus, located on a parcel containing 42.32 acres. The President of Flathead Valley Community College gave notice to the Board of Adjustment of Flathead County that it intends to construct a teaching brewery that may be contrary to zoning regulations adopted by Flathead County as the property is zoned SAG-10, (Suburban Agricultural). Pursuant to 76-2-402, MCA the board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.
- APPLICANT PRESENTATION**
6:01 PM
- Mark Mussman stated that Flathead Valley Community College was invoking there agency exemption as outlined in the Montana Code 76-2-402 which states "Whenever an agency proposes to use public land contrary to local zoning regulations, a public hearing, as define below, shall be held. (1) The local board of adjustments, as provided in this chapter, shall hold a hearing within 30 days of the date the agency gives notice to the board of its intent to develop land

contrary to local zoning regulations. (2) The board shall have no power to deny the proposed use but shall act only to allow a public forum for comment on the proposed use.”

**PUBLIC
COMMENT**
6:02 PM

None

**MDSV, LLC
(FCU-16-02)**
6:02 pm

A request from Mark Dowdy, on behalf of MDSV, LLP, for a conditional use permit to build a mini-storage/RV storage on property located within the Blanchard Lake Zoning District and zoned B-2 (General Business). The subject property is located at 5020 Highway 93 South near Whitefish and contains approximately 3.4 acres.

STAFF REPORT
6:04 pm

Valade reviewed Staff Report FCU-16-02 for the Board.

**BOARD
QUESTIONS**
6:07 pm

Netteberg asked about the access to the property.

Valade stated she believed it was a shared easement.

**APPLICANT
PRESENTATION**
6:08 pm

Devon Warren-5036 Tumblehome, Whitefish stated that the category is RV storage and mini-storage but none of those items would actually be occurring on the site. It is indoor vaulted storage with all storage on the inside and it will be managed by Mergenthaler. The public will not be coming in and out to get their belongings it will be moved in and out in vaults by Mergenthaler.

**BOARD
QUESTIONS**
6:09 pm

None

**PUBLIC
COMMENT**
6:09 pm

None

**STAFF
REBUTTAL**
6:09 pm

None

**APPLICANT
REBUTTAL**
6:09 pm

None

**BOARD
DISCUSSION**

Hash asked about traffic and having a specific dust plan, specifically the meaning of condition eight (8) of the staff report.

6:09 pm

Valade stated that the applicant would have to come up with a dust control plan and that it would have to be on record and accessible to the planning office.

Hash again asked about a specific dust control plan, stating that normally a specific plan for dust control would be included with the application.

Valade stated that it could be conditioned as part of the approval process.

Noble asked the applicant if their intention was to pave the drive area.

Tim Pearson-43 Pine Cone Lane, Kalispell stated he was the general contractor on the project. Pearson discussed the paving intentions of the project.

Devon Warren-5036 Tumblehome, Whitefish stated that all areas where customers and employees enter and park and anywhere that the truck enter and dock would be paved. The only portion that may not be paved is the back side and the trucks turn around area.

**MAIN MOTION
TO ADOPT F.O.F.
(FCU-16-02)**

6:15 pm

Noble made a motion seconded by Netteberg to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION**

6:16 pm

None

**ROLL CALL TO
ADOPT F.O.F.
(FCU-16-02)**

6:16 pm

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

6:16 pm

None

**MAIN MOTION
TO APPROVE
(FCU-16-02)**

6:16 pm

Netteberg made a motion seconded by Noble to accept Staff Report FCU-16-02 as Findings-of-Fact and Approve the Conditional Use Permit.

**BOARD
DISCUSSION**

6:16 pm

None

**MOTION TO
APPROVE
(FCU-16-02)
6:16 pm**

The motion passed unanimously by quorum.

**DANIEL &
DENISE
MILDREN
(FCU 16-03)
6:16 pm**

A request from Daniel & Denise Mildren, for an after-the-fact conditional use permit for a plumbing business 'Home Occupation' located within the Bigfork Zoning District and zoned SAG-10 (Suburban Agricultural). The subject property is located at 395 Swan River Road east of Bigfork, MT and contains approximately 19.3 acres.

**STAFF REPORT
6:16 pm**

Valade reviewed Staff Report FCU-16-03 for the Board.

**BOARD
QUESTIONS
6:20 pm**

None.

**APPLICANT
PRESENTATION
6:20 pm**

Eric Mulcahy-Sands Surveying-2 Village Loop, Kalispell stated he was representing the applicant. Mulcahy stated the applicants concurred with the staff report and had no problem with the conditions. He stated that the employees would visit the shop about two (2) or three (3) times a week as most work is done in the customers home as opposed to the customers coming to the business. Mulcahy stated that all of the conditions have been met for the condition use permit.

**BOARD
QUESTIONS
6:21 pm**

Gina Klempel asked about customers coming to the business.

Dan Mildren-395 Swan River Road, Bigfork stated that normally business is conducted in the customer's home. He stated that occasionally a customer might drop off a set of plans for the applicant to look at but generally he would have them drop them off at the local supply house in town.

**PUBLIC
COMMENT
6:23 pm**

Vince Gordon-255 Moose Ridge Lane, Bigfork spoke in favor of the application.

**STAFF
REBUTTAL
6:24 pm**

None

**APPLICANT
REBUTTAL
6:24 pm**

None

| | |
|--|--|
| BOARD DISCUSSION <i>6:24 pm</i> | None |
| MAIN MOTION TO ADOPT F.O.F. (FCU-16-03) <i>6:24 pm</i> | Netteberg made a motion seconded by Noble to adopt the Findings-of-Fact as written. |
| BOARD DISCUSSION <i>6:24 pm</i> | None |
| MOTION TO ADOPT F.O.F. (FCU-16-03) <i>6:24 pm</i> | The motion passed unanimously by quorum. |
| BOARD DISCUSSION <i>6:24 pm</i> | None |
| MAIN MOTION TO APPROVE (FCU 16-03) <i>6:25 pm</i> | Noble made a motion seconded by Netteberg to adopt Staff Report FCU-16-03 as Findings-of-Fact and Approve the Conditional Use Permit. |
| BOARD DISCUSSION <i>6:25 pm</i> | None |
| MOTION TO APPROVE (FCU-16-03) <i>6:25 pm</i> | The motion passed unanimously by quorum. |
| SIMON & AMY STERCHI (FCU-16-06) <i>6:26 pm</i> | A request from Simon & Amy Sterchi, for a conditional use permit to establish 'Bed and Breakfast Establishment' on property located within the Highway 93 North Zoning District and zoned SAG-10 (Suburban Agricultural). The subject property is located at 288 Songbird Lane and contains approximately 9.5 acres. |
| STAFF REPORT <i>6:26 pm</i> | Valade reviewed Staff Report FCU-16-06 for the Board. |

**BOARD
QUESTIONS**
6:28 pm

None

**APPLICANT
PRESENTATION**
6:28 pm

Amy Sterchi-288 Songbird Lane, Whitefish state that the bed and breakfast would be part of an existing building and no further construction would be done except for the addition of the parking pad.

**BOARD
QUESTIONS**
6:30 pm

Hash asked about signing for the bed and breakfast.

Sterchi stated there would be none.

**PUBLIC
COMMENT**
6:30 pm

None

**STAFF
REBUTTAL**
6:30 pm

None

**APPLICANT
REBUTTAL**
6:30 pm

None

**BOARD
DISCUSSION**
6:320pm

None

**MAIN MOTION
TO ADOPT F.O.F.**
(FCU-16-06)
6:31 pm

Klempel made a motion seconded by Noble to adopt the Findings-of-Fact as written.

**BOARD
DISCUSSION**
6:31 pm

None

**ROLL CALL TO
ADOPT F.O.F.**
(FCU-16-06)
6:31 pm

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**
6:31 pm

None

| | |
|---|---|
| MAIN MOTION TO APPROVE (FCU-16-06) 6:31 pm | <p>Netteberg made a motion seconded by Klempel to accept Staff Report FCU-16-06 as Findings-of-Fact and Approve the Conditional Use Permit with the conditions as written.</p> |
| BOARD DISCUSSION 6:31 pm | <p>None</p> |
| ROLL CALL TO APPROVE (FCU-16-06) 6:31 pm | <p>On a roll call vote the motion passed unanimously.</p> |
| RONALD PLATKE (FZV-16-02) 6:32 pm | <p>A request from Ronald Platke for a zoning variance to property within the Highway 93 North Zoning District currently zoned 'SAG-5 Suburban Agriculture'. The request is for a variance to Section 3.08.010(3) of the Flathead County Zoning Regulations which states "flag lots shall be permitted in the 'R' districts only." The property is located at an unaddressed lot (Assessor No. 0014906) near Whitefish Stage in Kalispell, MT and contains approximately 10 acres.</p> |
| STAFF REPORT 6:32 pm | <p>Ezell reviewed Staff Report FZV-16-02 for the Board.</p> |
| BOARD QUESTIONS 6:33 pm | <p>None.</p> |
| APPLICANT PRESENTATION 6:33 pm | <p><u>Dawn Marquardt- Marquardt Surveying-201 3rd Ave West, Kalispell</u> stated she was representing the applicant. One of the things mentioned was the utility which runs over the west portion of this property and makes it undesirable to divide in that direction. Marquardt also discussed the length of the driveway.</p> |
| BOARD QUESTIONS 6:35 pm | <p>None</p> |
| PUBLIC COMMENT 6:35 pm | <p>None</p> |
| STAFF REBUTTAL 6:35 pm | <p>None</p> |

| | |
|--|--|
| APPLICANT REBUTTAL <i>6:35 pm</i> | None |
| BOARD DISCUSSION <i>6:35 pm</i> | Hash asked if the driveway would be a burden on future sales. Marquardt stated it would not be a burden at all. |
| MAIN MOTION TO ADOPT F.O.F. <i>(FZV-16-02)</i> <i>6:37 pm</i> | Noble made a motion seconded by Klempel to adopt the Findings-of-Fact as written. |
| BOARD DISCUSSION <i>6:37 pm</i> | None |
| ROLL CALL TO ADOPT F.O.F. <i>(FZV-16-02)</i> <i>6:37 pm</i> | On a roll call vote the motion passed unanimously. |
| BOARD DISCUSSION <i>7:26 pm</i> | None |
| MAIN MOTION TO APPROVE <i>(FZV-16-02)</i> <i>6:37 pm</i> | Netteberg made a motion seconded by Noble to adopt Staff Report FZV-16-02 as Findings-of-Fact and Approve the Zone Variance. |
| BOARD DISCUSSION <i>6:38 pm</i> | None |
| ROLL CALL TO APPROVE <i>(FZV-16-02)</i> <i>6:38 pm</i> | On a roll call vote the motion passed unanimously. |
| CAROLYN (LINDY) DEWEY (FCU-16-05) | A request from Carolyn Dewey, for a conditional use permit to establish a "Camp and Retreat Center" on property located within the Blanchard Lake Zoning District and zoned AG-20 (Agricultural). The applicant intends to |

6:38 pm

develop a small retreat center incorporating farming, silviculture, health and wellness. The subject property is located at 127 Hideaway Trail and contains approximately 10.03 acres.

STAFF REPORT
6:38 pm

Ezell reviewed Staff Report FCU-16-05 for the Board.

**BOARD
QUESTIONS**
6:39 pm

Hash asked if the biggest issue was the access.

Ezell stated that was a significant issue.

Hash asked if approval would create a dangerous environment for the neighborhood.

Ezell stated that the road was gravel and essentially a one-way road and zoning regulations indicate that a two-way road that met road and bridge specification must be in place.

Hash stated that the planning office said the application did not meet all of the criteria and was it significant enough that the planning office would not be recommending approval.

Ezell stated that the planning office is not specifically recommending denial of the application, but it would be important to note that the zoning regulations do state that the road needs to meet road and bridge standards. To that, you could say it does not meet zoning regulations, therefore, should not be approved without a condition requiring the applicant to upgrade the road.

Noble asked on condition eight (8) of the staff report it states, "The existing driveway shall be widened to 20 foot wide in order to accommodate 2-way vehicle traffic access to the subject property", would this take care of the access issues.

Ezell stated that it would.

**APPLICANT
PRESENTATION**
6:44 pm

Carolyn Dewey-127 Hideaway Trail, Whitefish stated that her understanding after reading the staff report she needed to put in a privacy fence and widen the road. She believed she met all the requirements for the conditional use application. Dewey stated that after reviewing the comments, she realized this application was troublesome for her neighbors, and that there was a civil issue that needed to be addressed separate from this application. She did not feel these should impact the request for the conditional use permit.

**BOARD
QUESTIONS**

Hash asked if Dewey had read the staff report specifically the findings regarding the fencing and the driveway and if this was something Dewey would be able to

6:46 pm

accomplish.

Dewey stated the driveway is almost completely done with exception to where her gate is; it narrows to sixteen (16) feet four (4) inches. Dewey stated she had been working on the road but was asked to stop by the neighbors which she did.

**PUBLIC
COMMENT
6:48 pm**

Ken Kalvig-200 Cooperative Way, Suite 202, Kalispell stated he was there on behalf of his client, Steve Pleasants. Kalvig spoke about the packet that had been delivered to the planning office just prior to 5:00 pm that afternoon. Kalvig spoke about the letter and photographs from Steve Pleasants opposing the conditional use permit.

He stated that to say you can boil down this request to a couple of issues, such as the privacy fencing and the driveway just doesn't get at it. Kalvig stated that what is being proposed is extremely far out of the character of the neighborhood. Kalvig spoke about one of the buildings which is approximately 33 feet high and the privacy fence that was being built to shield it use which is approximately 16 feet high. He stated that this was not mitigation; this would negatively affect his clients' right to peacefully enjoy his property and his property value. Kalvig stated that as far as widening the road, there were some legal issues that are much deeper than just widening the road. He spoke about the covenant, conditions, and restrictions (CCR) which were placed on the property for the last eighteen (18) years which describe the property as a single family residential neighborhood with very limited commercial activity allowed. Kalvig stated that the proposed use would far exceed the scope of the easement that the applicant has across Mr. Pleasants property. Kalvig spoke about one of the conditional use permit criteria is to evaluate the impact the proposed use would have on the immediate neighborhood. In order to do this, you would need to look at the CCR's to see what the vision is for the neighborhood. Kalvig also spoke about the zoning regulations instructing adjacent land owners who are commenting on a proposal to speak about how their personal and legal interests are being adversely affected by the proposal. Kalvig stated that Pleasants had a legal interest in the CCR's and the scope of the easement across his property which would be adversely affected by the proposed conditional use permit.

Kalvig stated that there were several reasons to deny the application. He felt the application was incomplete as there was no description of proposed business contained in it, the site plan was incomplete, and no analysis was done on the impact to the subject property and the neighborhood. He stated there was a safety issue when leaving or entering the highway off Hideaway Trail.

Kalvig spoke about the scope of the easement across Pleasant's property and cited a Supreme Court case regarding easements.

Kalvig stated that approval of this application would place two (2) principal uses on the property, a single family residence and a camp and retreat center. He stated zoning for this property only allows for one (1) principal use.

Steve Pleasants-133 Hideaway Trail, Whitefish spoke in opposition of the application. He spoke about a letter from Jim Taylor who also opposed the application. Pleasants spoke about covenants in general and the covenant's that were on the property.

**BOARD
DISCUSSION
7:12 pm**

The Board discussed at length the need to review the comments that were received just prior to 5 pm. The Board and Mussman also discussed at length the option of continuing the hearing to the next scheduled meeting date of June 7, 2016.

**MOTION TO
CONTINUE
HEARING
(FCU-16-05)
7:31 pm**

Klempel made a motion seconded by Noble to continue FCU-16-05 to the next scheduled meeting date of June 7, 2016.

**BOARD
DISCUSSION
7:31 pm**

None

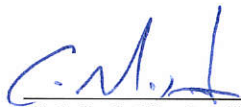
**NEW BUSINESS
7:32 pm**

None

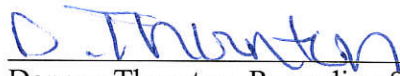
**OLD BUSINESS
7:32 pm**

**ADJOURNMENT
7:33 pm**

Klempel made a motion seconded by Netteberg to adjourn the meeting.



C. Mark Hash, Chairman



Danene Thornton, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 6/16